

# **National City Community and Police Relations Commission Operating Procedures**

## **Article I. Purpose and Legal Considerations**

**Section 1.01** In October 2003, the City Council established the Community and Police Relations Commission (hereafter referred to as “Commission”). The Commission is to serve as an independent, unbiased and impartial office that is to be readily available to the public. The Commission shall be a medium for the improvement of police-community relations, and to facilitate mediation of disputes whenever possible. The Commission will provide a forum for Citizens to voice their concerns or comments about police conduct, practices and policies, and ameliorate adversity between Citizens and the National City Police hereafter referred to as “Department”). To carry out these functions, the Commission will function through the Office of the City Manager, to whom the Chief of Police reports.

The Commission is authorized to receive, investigate and review citizen complaints regarding Department personnel for alleged misconduct, and to recommend appropriate changes of Department policies and procedures toward the goals of safeguarding the rights of all persons and promoting higher standards of competency, efficiency and justice in the provision of community policing services. These Operating Procedures are not intended to replace or diminish the procedures already in place in the Department for investigating citizen complaints, but are intended as a method of supplementing those procedures in order to establish an element of transparency to the citizenry for the handling of those complaints.

The Commission shall not be required to conduct independent investigations when it is satisfied that its oversight responsibility can be satisfied by the monitoring and review of a Departmental investigation into a complaint. In this respect, the Commission shall be considered an integral part of the City’s management structure as an adjunct to the internal Department processing of citizen complaints, with an independent overview status to ensure transparency and correctness of process for the public.

The COMMISSION therefore adopts these operating procedures in furtherance of those objectives. These operating procedures shall define the authority and protocols of the COMMISSION and are hereby recommended for adoption by the Council in furtherance of the Council’s objectives.

**Section 1.02** In the conduct of its affairs, the Commission will observe all applicable requirements of state and local law, including the following which have been summarized as follows:

(a) The Police Officers Bill of Rights (Government Code sections 3300, et seq.) which generally provides police officers certain protections and rights of representation and participation in

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Investigations pertaining to their conduct, and the right of access to and comment upon any findings of that Investigation—whether positive or negative.

(b) Penal Code sections 832.5 and 832.7 which pertain to the procedures for Investigation of Complaints involving police officers and safeguards against disclosure of the Findings of those Investigations and other information relating to police personnel files, except such specified disclosure as may be allowed only to the person who actually files the Complaint.

(c) The Ralph M. Brown Act (Gov. Code, § 549501 et seq., hereinafter “the Brown Act,” or “the Act”) which shall govern open meetings for local government bodies.

(d) Department rules and procedures, which govern the rights and duties of Department personnel.

**Section 1.03** Neither the Commission, Commission staff, nor any retained consultant shall comment upon or recommend the level of discipline for any officer pursuant to any review conducted under the authority of these operating procedures.

(a) Departmental discipline of any officer shall be independent of and not dependent upon any finding by the Commission or its review of any investigation. The Department will conduct discipline in a timely manner in accordance with law and its internal procedures.

(b) The Commission shall not interfere with the administration of the department, but shall make its recommendations for change or improvement to the Council, the City Manager or the Chief of Police, as appropriate, consistent with the operating procedures outlined herein.

**Section 1.04** These operating procedures shall not be construed as restricting any individual from contacting the Mayor, the City Council, any individual Councilmember, the City Manager or the Chief of Police on any matter concerning the Department, whether favorable or adverse.

**Article II. Definitions**

**Section 2.01** In these Operating Procedures:

"CHIEF" means the Chief of the Police DEPARTMENT.

"CITIZEN" means any person who is not an employee of the DEPARTMENT or organization.

“CITY” means the administrative offices, administrative staff, officers and officials, the physical location, all jurisdictional areas, and the elected representatives of the City of National City.

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“CITY ATTORNEY” means the City Attorney of the City of National City or their designee.

“CITY MANAGER” means the City Manager of the City of National City or their designee.

“COMMISSION” and “CPRC” refer to the Community and Police Relations Commission, whose members are appointed by City COUNCIL.

“COMMISSIONER” means an appointed member of the Community and Police Relations Commission.

“COMPLAINT” means a COMPLAINT by a CITIZEN of alleged OFFICER misconduct, or a DEPARTMENT employee or OFFICER who feels aggrieved by an INVESTIGATION or REVIEW.

“COMPLAINANT” means any person who files a COMPLAINT against an employee of the National City Police DEPARTMENT, or a DEPARTMENT employee or OFFICER who feels aggrieved by an INVESTIGATION or REVIEW.

“CONDUCT” means any act or omission by an OFFICER, whether commendable or constituting misconduct.

“CONSULTANT” means the professional staffing retained by the City MANAGER to work with the COMMISSION.

“COUNCIL” means the City Council and Mayor of the City of National City.

“DEPARTMENT” means the Police DEPARTMENT of the City of National City.

“FINDING” means a conclusion reached as a result of an INVESTIGATION, regarding whether a COMPLAINT is sustained, not sustained, unfounded, exonerated or frivolous.

“IAD” means the Internal Affairs Division of the DEPARTMENT, whose responsibilities and procedures are described in the DEPARTMENTs Manual of Rules and Regulations, specifically Operating Procedure No.1005, as amended from time to time.

“INCIDENT” means the alleged occurrence of misconduct by an OFFICER of the DEPARTMENT.

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“INVESTIGATE” or “INVESTIGATION” shall refer to a REVIEW of the formal Internal Affairs INVESTIGATION conducted by DEPARTMENT, as well as an informal INVESTIGATION conducted by a police supervisor into allegations of MISCONDUCT.

“MISCONDUCT” means an act or omission by an OFFICER during an encounter with a CITIZEN that allegedly violates DEPARTMENT regulations or orders, or other standards of conduct required of CITY employees.

“POLICY-RELATED ISSUE” means a topic pertaining to the DEPARTMENT’s hiring and training practices, the Manual of Policies and Procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular OFFICER’s conduct.

“OFFICER” means a sworn police OFFICER employed by the DEPARTMENT about whom a COMPLAINT has been submitted to the COMMISSION.

“OFFICER INVOLVED” means an incident involving a sworn police OFFICER employed by the DEPARTMENT about whom a COMPLAINT has been submitted to the COMMISSION.

“REQUEST FOR FURTHER REVIEW” or “REVIEW” means a request by an Complainant and the COMMISSION’s examination of an INVESTIGATION of, alleged OFFICER MISCONDUCT, respectively.

“SERVICE COMPLAINT” means a COMPLAINT that is not related to specific OFFICER misconduct but rather is related to services received from an OFFICER or the DEPARTMENT.

“SUPPORTED BY THE EVIDENCE” means the evidence supports a FINDING regarding a COMPLAINT, which a reasonable person could make in light of the evidence, regardless of whether or not the COMMISSION agrees with the FINDING.

“SUBPOENA” means a writ to be issued commanding the person or party designated in it to appear before the COMMISSION as a witness, or to produce documents constituting evidence contained in the INVESTIGATION.

**Article III. Community and Police Relations Commission**

**Section 3.01** The Commission is established by the Council with staff support from the City Manager’s Office.

**Section 3.02** The Commission shall be comprised of eight (8) individuals appointed by the Mayor with the approval of the City Council. Of the eight members, seven (7) shall be voting

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members, and one (1) shall be a non-voting member. Of the seven voting members, five (5) shall be residents of the City of National City. The one nonvoting member shall be a member of the National City Police Officers' Association POA. The City Council is authorized to appoint up to two alternate representatives to the primary POA representative, one of whom would attend Commission meetings when the primary representative is unable to attend, and who shall have the same rights and responsibilities as the primary representative.

Vacancies in Commissioner positions shall be nominated and appointed as follows per City Council Policy #107.

**Appointment Process:**

- A. Opportunity to apply. All interested individuals shall be given an opportunity to submit applications for vacancies on City Boards, Commissions, and Committees. Incumbent Appointees are not automatically re-appointed but are required to fill out an abbreviated application provided by the City Clerk, indicating their interest in continuing to serve.
- B. Unexpired terms. If an incumbent Appointee was appointed to fill an unexpired term and the Appointee serves for less than one year in that position, the Council may re-appoint the incumbent without considering other applicants.
- C. Vacancies. When vacancies occur, the following procedure shall be followed:
  - 1. Schedule vacancy. When a term is expiring or expires, public notice of the vacancy shall be made, inviting interested individuals to submit applications for the vacancy on a form provided by the City Clerk on the City website.

Unscheduled vacancy. An unscheduled vacancy shall be filled according to Government Code Section 54974, which generally provides as follows: Whenever an unscheduled vacancy occurs, whether due to resignation, death, termination, or other causes, a special vacancy notice shall be posted in the Office of the City Clerk, the City website, outside City Hall on the Bulletin Board, and on City social media platforms not earlier than twenty (20) days before or not later than twenty (20) days after the vacancy occurs. The City Council shall not make a final appointment for at least ten (10) working days after posting the notice in designated locations. The notice's posting and application period shall be thirty (30) calendar days. However, if it finds that an emergency exists, the City Council may, fill the unscheduled vacancy immediately. According to this section, a person appointed to fill the vacancy shall serve only on an interim basis until the final appointment.

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The end of term for the members of Boards, Commissions, and Committees generally occurs in an annual rotation during the months of March and September. Appointments will be considered at those times unless a vacancy resulting from a resignation results in the lack of a Quorum on the Board, Commission, or Committee, in which case the appointment could occur at the time of the unscheduled vacancy in accordance with the procedure set out above.

D. Implementation. Implementation of Council policy for appointment to Boards, Commissions, and Committees requires the following:

1. Per Government Code Section 54972, on or before December 31 of each year, the City Council shall prepare a list of appointments of all regular and ongoing Boards, Commissions, and Committees appointed by the City Council. The City Clerk will prepare the list of all regular and ongoing Boards, Commissions, and Committees appointed by the Mayor or the City Council. The list shall contain a list of all terms that will expire during the next calendar year, the incumbent appointee's name, the appointment date, the term's expiration date, and the position's necessary qualifications. It shall also include a list of all Boards, Commissions, and Committees whose members serve at the City Council's pleasure and the qualifications required for each position. This Local Appointments List shall be made available to the public on the City website.
2. Notice. A public notice for vacancies must be placed in the newspaper of general circulation within the City, on the City's website, City Hall Bulletin Boards, and City social media platforms.
3. Expiration of term. All appointees will receive a letter as their terms expire asking if they would like to re-apply for the position.
4. Applications. Applications shall be available on the City website and in the City Clerk's Office. Submissions must be received before the advertised deadline for consideration for the appointment. All applications will be retained in the City Clerk's Office for one year from the date the application was submitted. During the one-year retention period of the application, an applicant shall be considered for other vacancies on Boards, Commissions, and Committees. The City Clerk's Office will notify the applicant being considered for an appointment to confirm that they are still interested in volunteering.
5. A member may only serve on one (1) Board, Commission, or Committee at a time. If an applicant applies for another position on a different Board, Commission, or Committee, that applicant will forfeit the prior seat and a vacancy will occur per policy.

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6. Interviews:

- a. Mayor Appointments: Interviews for Mayoral appointments will be conducted by the Mayor outside of the public meeting and scheduled by the Mayor's Office.
- b. City Council Appointments: Interviews for the four (4) Civil Service Commission, Planning Commission, Housing Advisory Committee, and Port Commission who serve at the City Council's pleasure and are appointed by the City Council as a body will be interviewed in the public forum at a City Council Meeting as described below.

7. Mayoral Appointments:

The Community and Police Relations Commission is a Mayoral Appointment.

The Mayor will make the motion to appoint (naming the appointee) and Councilmembers may second the motion. The City Clerk will then take a roll call vote of the City Council. A majority vote of the City Council will be required for the appointment. If the majority of the City Council choose to deny the proposed appointment, the Mayor shall either propose an alternative candidate from the current application pool or choose to reopen the application period and return to the City Council at a future City Council Meeting with a different applicant for consideration. If a Mayoral Appointment is not approved by the majority of the City Council by confirmation, that applicant is removed from the pool for that seat. The Mayor will return to a future meeting with a substitute Mayoral appointment.

10. Re-appointment beyond two terms. Anyone wishing to be re-appointed to any Board, Commission, or Committee and has served two or more full terms already must be approved by a four-fifths vote of the City Council. If all five members of the City Council are not present, or if one member abstains or recuses their vote, the four-fifths requirement shall be changed to require only a simple majority.

11. Report to Council:

All applications received for vacancies, whether Mayoral Appointment or City Council Appointment, will be attached to the staff report to Council. All applications will have private personal information redacted (name, street numbers and name of street address, and phone number). This redacted information is in alignment with Government Code Section 6255(a) because the public interest served by not disclosing the applicant's personal, private information and protection of the applicant's right to privacy outweighs the public interest served by disclosing that information.

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12. An automatic vacancy upon becoming a Non-Resident. An unscheduled vacancy automatically occurs when a resident holding an appointment position on a City Board, Committee, or Commission becomes a non-resident by moving out of National City limits. When an unscheduled vacancy occurs due to a resident becoming a non-resident, the unscheduled vacancy may be filled as follows:

a. A special vacancy notice shall be posted in the Office of the City Clerk, and in other places as directed by the City Council, not earlier than 20 days before or not later than 20 days after the vacancy occurs. Final Appointment at a City Council Meeting shall not be made by the Appointing Authority for at least 10 working days after the posting of the notice in the City Clerk's Office.

b. The Appointing Authority may appoint the former resident to a Non- Residential position if a Non-Residential position is vacant.

However, the Appointing Authority may, if it finds that an emergency exists, fill the unscheduled vacancy immediately. A person appointed to fill the vacancy shall serve only on an acting basis until the final appointment is made pursuant to this section.

13. Only City Residents may be elected to Chair and Vice-Chair positions. To be eligible to be elected as the Chairperson of a City Board, Committee, or Commission, the member must be a resident of the City.

14. Resignations, Attendance, Training, and Removals

Resignation:

If a Commissioner or Member of a Board, Committee, or Commission is unable to continue serving because of health, business requirements, or personal reasons, a letter of resignation shall be submitted to the City Clerk, who will present to the City Council.

Attendance:

Regular attendance at meetings is critical to be effective operation of City Boards, Commissions, and Committees. The City Council relies on the advice of the City's Boards, Commissions, and Committees, which is the result of discussions among appointed members. The City Council anticipates that members of Boards, Committees, and Commissions shall make every reasonable effort to attend all regular and special meetings of their respective Boards, Commissions, and Committees, and to be prepared to discuss matters on their respective agendas.



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A Commissioner or Member of a Board, Committee, or Commission shall be considered removed from any advisory board under the following conditions:

1. A Commissioner or Member of a Board, Committee, or Commission with unexcused absences from three consecutive regularly scheduled meetings.
2. A Commissioner or Member of a Board, Committee, or Commission misses more than 25% of the advisory body's meetings in a calendar year.
3. A Commissioner or Member of a Board, Committee, or Commission must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

#### **Excused Absences:**

An "excused absence" is only granted when absolutely necessary and pre-approved if at all possible. The City Council encourages Boards, Commissions, and Committees to refrain from scheduling meetings on cultural and religious holidays in order to encourage full participation by all Commissioners, Board Members, and the public. The pre-approval of excused absences will be by the body as a whole and documented in the meeting minutes.

Excused absences are listed as follows:

1. Illness of the Commissioner or Member of the Board, Committee, or Commission, their family member, or their personal friend;
2. Business commitment of the Commissioner or Member of the Board, Committee, or Commission that interferes with the attendance at a meeting;
3. Attendance of the Commissioner or Member of the Board, Committee, or Commission at a funeral, religious service or ceremony, wedding, or other similarly-significant event; or
4. Other reason for which the Commissioner or Member of the Board, Committee, or Commission has given notice to the Chairperson or Secretary of their unavailability fifteen (15) days in advance, as long as the unavailability is not expected to last longer than 30 days.

#### **Removal:**

The Secretary or Lead of each Board, Commission, or Committee will report the attendance to the Office of the City Clerk on a monthly basis. If the attendance or absences fall within these guidelines, the Office of the City Clerk will prepare a report to City Council for review and possible removal of the Commissioner, Member, or Alternate sitting on the Board, Committee, or Commission. Any Commissioner, Member, or Alternate sitting on a Board, Committee, or Commission may be removed from office at any time by a simple majority vote of the City Council at a regularly scheduled Council meeting with or without cause.

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### **Mandatory Training and Filing Requirements:**

Commissioners and Members of Board, Committee, or Commission, as appointed by the legislative body, are entrusted with certain responsibilities and concomitant training and reporting. The following are requirements of Commissioners and Members of Boards, Commissions, and Committees. This training is required to be completed within 30 days of appointment or notification.

1. Oath of Office (Article XX of the California Constitution, and California Government Code Section 36507)
2. Fair Political Practices Commission (FPPC) Statement of Economic Interest Form 700 Filing (California Government Code Section 87100 et seq)
3. AB1234 Ethics Training (California Government Code Section 53235.1(b))
4. Sexual Harassment Training
5. Brown Act Training
6. Social Media Training
7. Any training required by State Law, Federal Law, or City Policies.

All training is offered in a variety of formats including in person, via Zoom, training website/software, and pre-recorded video. Currently, these are all requirements of the Mayor and City Council, and City staff.

### **Removal:**

Failure to complete any of these requirements within 30 days of the appointment date or date of notification is cause for automatic removal.

**Section 3.03** The Commission shall adhere to adopted Bylaws which shall be approved by Council and filed with the City Clerk of National City.

**Section 3.04** The Commissioners shall be responsible for:

(a) Participating in orientation and training activities at least two times per year, that may include: reviewing of DEPARTMENT and IAD policies and procedures; attending the DEPARTMENT or County of San Diego Citizens' Academy; completing “ride-alongs” with OFFICERS; attending recruiting and academy workshops; the annual National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference; attending training opportunities available to NCPD officers including but not limited to investigative practices, the Psychiatric

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Emergency Response Team (P.E.R.T.), de-escalation, racial bias, implicit bias, Department practices; and other relevant training opportunities.

(b) Service for a term of ~~two~~ three years, subject to reappointment by Council. Upon expiration of term, a Commissioner shall serve until re-appointed or replaced.

(c) Attending Commission meetings, except when excused for good cause.

(d) Serving staggered terms to better ensure continuity. A lottery shall be held during the next regularly scheduled meeting following the adoption of these procedures to establish the term of each Commissioner currently appointed. No more than four voting COMMISSIONERS shall be appointed to three years terms as a result of the lottery, all others shall be appointed to a term of one-year. All Commissioners will remain eligible for reappointment upon expiration of their term.

(e) Annually, electing a chair and vice-chair from among the Commissioners.

(f) Adopting operating policies and procedures as necessary and appropriate to carry out their duties in a fair and unbiased manner.

(g) Receive and monitor or investigate citizen complaints regarding police conduct, but without interfering with the administration of the police department.

(h) Request and receive supplemental information from the police department regarding citizen complaints and such other matters as the commission may request.

(i) Allow parties the opportunity to mediate their disputes.

(j) Make recommendations to the city council regarding additional duties that the commission may perform.

(k) Make an annual report of its activities, findings and recommendations to the city council.

(l) Advise on police department operations, and make recommendations on police policy issues.

(m) Conduct investigations and hold public hearings. The commission has the power to examine witnesses under oath and compel their attendance or production of evidence by subpoena issued in the name of the city and attested by the city clerk. It shall be the duty of the chief of police to cause all such subpoenas to be served, and refusal of a person to attend or testify in answer to

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such a subpoena shall subject the person to prosecution in the same manner as set forth by law for failure to appear before the city council in response to a subpoena issued by the city council. Each member of the commission shall have the power to administer oaths to witnesses.

(n) Keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record unless the city attorney determines otherwise.  
(Ord. No. 2013-2381, § 1, 2-5-2013)

**Article IV. Role of the City Council**

**Section 4.01** The Council shall review applications of nominees to the Commission, approve appointments and receive periodic reports on Commission activities.

**Article V. Consultant Selection**

**Section 5.01** In consultation with the City Manager, the Commission may retain a Consultant to guide the independence of the Commission. The Consultant should be a person of recognized judgment, objectivity and integrity who is capable of analyzing problems of public administration and public policy, and who shall have a working knowledge commensurate with the duties of the Commission.

**Article VI. Staffing and Delegation**

**Section 6.01** The City Manager may appoint staff to assist the Commission if requested and may appoint other personnel necessary to carry out the provisions of these operating procedures in keeping within the adopted budget for the Commission.

**Section 6.02** The City Attorney shall advise and represent the Commission.

**Section 6.03** Nothing within Article VI shall influence the autonomy of the Commission and its independence to carry out its mission.

**Article VII. Office Facilities and Administration**

**Section 7.01** The CITY shall provide suitable office facilities for the Commission and/or staff in a location convenient for the public but separate from the Department.

**Section 7.02** The Commission staff shall function within the organization and administration of the City Manager to whom the Chief of Police Reports.

**Section 7.03** The Consultant shall comply with City purchasing procedures and shall select, with the approval of the Commission and the City Manager, any sub-consultants to assist with the work undertaken on behalf of the Commission.

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**Article VIII. The Authority of the Commission**

**Section 8.01** The Commission shall have the authority to do the following:

- (a) Receive Complaints and select the appropriate manner to address the Complain.
- (b) Report on Complaint resolution activities. To track and issue statistical and other appropriate reports on the disposition of Complaints to the public, the City Manager and the Council, and to monitor and report measures of activity and performance of the Department, subject to confidentially requirements of law.
- (c) Monitor Investigations. To identify Complaints which merit the additional involvement of the Commission, and to Review evidence and Investigation efforts.
- (d) Communicate with Complaints. To serve as a source of contact with Complaints regarding the intake processing, status and results of the Complaint, and to assist the Department in communicating with the Complainant.
- (e) Arrange hearings of appeals. To provide for an appeal for Complainants and schedule Commission hearings.
- (f) Recommend policy changes. To evaluate Complaints and other information and Investigation practices and to make recommendations to the Chief to prevent future problems.
- (g) Outreach. To widely distribute Complaint forms in languages and formats accessible to Citizens, to inform and educate them on the importance of reporting Complaints, to hold public meetings to hear general concerns about police services, and to serve as a forum for Citizen issues subject to confidentially requirements of law.
- (h) Records and Investigation access. Notwithstanding any other provision of law, to have access to and to examine any Department records, including records which are not confidential by law, including personnel records that are relevant to an Investigation under its purview, subject to any applicable state or federal laws and subject to the Chief's authorization. The Commission shall not have access to legally privileged documents held by the City Attorney or Attorney-Client communications held by the City Attorney's clients. Neither the Commission nor any individual Commissioner or the Consultant shall disclose to any person or source confidential information or personnel records, and they shall be subject to the same penalties and restrictions as the legal custodian of the records for any unlawful or unauthorized public disclosure.
- (i) Adopt, promulgate, amend and rescind rules and procedures required for the discharge of the Commission's duties, including policies and procedures for receiving and processing

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Complaints, conducting reviews of Investigations, and the issuance of reports regarding its Findings, conclusions and recommendations.

(j) Issue reports on an annual basis identifying any policy-related issues or quality of Investigation issues that warrant improvement. The Commission shall address any policy-related or quality of Investigation issues that would warrant further review.

(k) Oversight. The Commission shall report the material obstruction of or interference with an Investigation under its' cognizance, or observed malfeasance or misfeasance in office (other than that which is the subject of inquiry of a Complaint) to the Chief, or to the City Manager, when appropriate.

**Article IX. Powers and Duties of the Commission**

**Section 9.01** In carrying out its functions in a fair and unbiased manner, the Commission's duties and powers shall include the following:

(a) Conduct meetings. To schedule and conduct at least four (4) meetings per year for the purpose of exercising the authority and responsibility delegated to it in these operating procedures. Meetings and hearings conducted pursuant to these operating procedures shall be subject to the Brown Act. The number of Commissioners required for a quorum shall be a majority of the voting members as defined in Section 3.02 of these operating procedures. The Chair of the Commission, or the Vice-Chair in the absence of the Chair, in consultation with the City Attorney and City Manager's Office, shall be authorized to call special meetings when the Commission is not in session.

(b) Gather community concerns. To participate in various community meetings to hear concerns about police services as well as to gather both commendatory and negative comment, not to include concerns about individual Officers.

(c) Recommend policy changes. To assist the Chief in identifying specific patterns or problems and to participate in the development of policy recommendations.

(d) Advise on operations. To review methods for handling Complaints and advise on criteria for dismissal, mediation, and Investigation.

(e) Receive Complaints. The Commission may receive Complaints from any source concerning alleged Officer Misconduct. In the interest of the greater public good:

i) The Commission shall make reasonable accommodation when Complainants cannot file their Complaint at the Commission office or with the Department.

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**ii)** Accept Complaints for Investigation and Review that are based upon first-hand knowledge, or make reasonable inquiry during initial intake processing regarding whether such knowledge or the identity of one or more percipient witnesses is ascertainable.

**iii)** The Commission shall not accept Complaints or Investigate matters in civil or criminal litigation, or those matters for which a notice of tort claim, or a grievance, discrimination Complaint or other appeal under collective bargaining agreement or City personnel rules has been filed with appropriate authorities. The Commission shall not accept Complaints that are conjectural or vague. Any previously commenced Investigation shall be discontinued when one of these events or factors is determined to exist.

**iv)** The Commission shall protect the confidentiality of Complaints, Officer's or witnesses, except insofar as disclosures may be necessary to enable the Commission to carry out its duties or comply with applicable collective bargaining agreements, or where the disclosure of records is directed by the City Attorney or District Attorney. Maintenance of confidentiality and any exceptions to confidentiality shall be consistent with the requirements of law.

**v)** The records of the Commission shall be considered records of the City, and shall be filed in the office of the City Clerk, or the Chief when the documents constitute a personnel record or matter. The records of the Commission are subject to the requirements of law regarding retention, disclosure, and those circumstances when disclosure is not permitted.

**(f)** Hear or Review appeals. To hold hearings or Review Investigations pertaining to Complaint appeals; to report Findings conclusions and recommendations consistent with public disclosure requirements of law.

**(g)** Outreach to the public. To disseminate information about the Commission's activities to organizations in the community and to present statistical reports to Council that in such a way that does not involve disclosure of confidential personnel information.

**(h)** Delegation. The Commission may Review by means of delegation to not more than two Commissioners who shall report back to the full Commission their findings and conclusions with regard to an Investigation under Commission cognizance. Reference elsewhere in these operating procedures to the Commission respecting REVIEW and Investigation shall include activity by such delegates, which activity shall not be construed as constituting a meeting that is subject to the Ralph M. Brown Act regarding notices, agenda and public meeting criteria, unless such delegation constitutes a "Standing Committee" under "the Act". The proceedings, to review Complaints and to reach the ultimate position of the Commission's Review of an Investigation, shall be in Closed-session pursuant to Government Code Section 54957.

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**Article X. Handling Complaints**

**Section 10.01** To ensure appropriateness and consistency in handling **Complaints** received, the COMMISSION shall rely on the DEPARTMENT to determine whether a **Complaint** is to be treated as a Service **Complaints**, commendatory comment, or as a **Complaint** requiring further review. The Commission may recommend to the Department that an Investigation be handled by the Internal Affairs Department instead of a supervisor's or commander's Investigation.

**General Protocols**

(a) The Commission shall Investigate and review citizen-initiated and Department-initiated Complaints. It is understood that Department-initiated Complaints may require confidentiality in order for the Internal Affairs Department or other authorities to complete their Investigation.

(b) The Commission may gather information from a Complainant and forward it to the Department. The Commission shall monitor timeliness and disposition of the Investigation. Once the Commission receives a Complaint, it shall forward it to the Department for Investigation in accordance with Police Department Operating Procedures.

(c) At the conclusion of an Investigation, the Commission shall have an opportunity to review and comment separately to the Chief on the Investigation and any remedial actions taken by the Department resulting from the Investigation, other than regarding disciplinary actions.

(d) The Commission may dismiss a Complaint or make a Request for further review for the following reasons:

- i) The Complainant could reasonably be expected to use, or is using, another remedy, channel or tort claim for the grievance stated in the Complaint;
- ii) The Complainant delayed too long in filing the Complaint to justify present examination – a limit of one-year from the original date of the Incident is established for these purposes;
- iii) Even if all aspects of the Complaint were true, no act of Misconduct would have occurred;
- iv) The Complaint is trivial, frivolous or not made in good faith;
- v) Other Complaint must take precedence due to limited public resources;
- vi) The Complainant withdraws the Complaint or fails to complete or cooperate with necessary Complaint steps or procedures.

(e) Nothing contained herein shall preclude or supersede the processing and Investigation of Complaints that are initiated by the Department.

The Commission's procedures shall supplement or complement those activities, and shall furnish community members and Complainants an alternative forum for redress and Complaint resolution. Moreover, nothing shall preclude or restrict the authority of the City Manager to supervise the Chief of the Department, consistent with the duties and responsibilities conferred upon that office by law.



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**Section 10.02 Protocols for Reviewing Complaints**

**(a)** In accordance with Police Department Operating Procedures, resolution by the Department shall include “declining” the Complaint, conducting an

“investigation”, conducting an "inquiry," or handling the Complaint as a "service complaint."

**i)** The Department will send an introductory letter to each Complainant identifying the assigned case investigator, the anticipated time in which the Investigation should be completed, and information regarding the right of the Complainant to seek a Request for further review of the Commission once the Investigation is completed should the Complainant believe evidence or allegations were omitted.

**ii)** In the case of an “inquiry”, the Department will send an introductory letter to the Complainant explaining that they will receive contact from the Department once the Investigation regarding the concern has been completed.

**iii)** In all cases, Department will send a copy of such letter to the Commission for their tracking purposes.

**iv)** The Department will keep the Commission apprised of the status of each INVESTIGATION, and no less than quarterly, send status letters to each Complainant. The Officer(s) involved shall be informed pursuant to Department policy and procedures.

**v)** “Inquiry” Investigations will result in a letter, including any appeal information, sent to the Complainant from the Department outlining the results of the Investigation. The Department will forward a copy of the summary Investigation, and the letter to the Commission for tracking purposes. The Officer(s) involved shall be informed pursuant to Department policy and procedures.

**(b)** Commission members shall avoid public comment on pending COMPLAINTs.

**i)** No member of the Commission shall discuss or listen to discussion of the facts or analysis of any matter which is the subject of a Complaint prior to its Review or Closed-session meeting.

**ii)** No member of the Commission shall pledge or promise to vote in any particular manner in any pending Complaint.

**iii)** Failure to comply with this regulation shall be grounds for removing a Commissioner from the Review of the Complaint by action of the remaining members of the Commission.

**(c)** After the Department renders its Findings on the Complaint, the matter is referred to the Commission to Review the case. The file of the Investigation related to the Complaint shall be made available to the Commission consistent with Article VIII, Section 8.01(h). This includes an original of the Complaint, video or audio tape recordings of interviews of witnesses and parties to the Incident, and physical evidence that was considered. The Commission members are required to conduct their Review in the Department to preserve the required confidentiality. Review proceedings shall be in Closed-session pursuant to Government Code Section 54957 to hear Complaints or charges brought against National City Police Department employees by a

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citizen (unless the employee requests a public session). Notes made by the Commission shall be left with the file in the Department.

- i)** The Department will provide notice to the Commission whether the disposition was “sustained,” “not sustained,” “exonerated,” “unfounded,” “other findings”, or the “complainant non-cooperative”.
- ii)** The Commission’s Review of documents shall rely upon the evidence submitted in the Investigative report.
- iii)** The Commission may request within its scope of the Review the Department to appear and answer questions regarding the Investigation, and may also request the responsible Department Commander or Supervisor to answer questions regarding the basis and the rationale for a particular Finding or decision.
- iv)** Requests to the Department to appear and answer questions at the Review shall be made to the Chief.
- v)** The Commission may request an Officer to appear at a Commission Review, but no Officer who is subject to an Investigation shall be compelled to testify as a witness against themselves. Officers appearing before the Commission may appear with counsel.
- vi)** The Commission may Subpoena the appearance of witnesses who are outside City employ to clarify evidence, and to the extent necessary to insure fairness to all parties. Subpoenas shall be issued in accordance with National City Municipal Code Chapter 2.74 to evaluate evidence pertinent to the Review of the Investigation.
- vii)** The Complainant is not entitled to be present, except when called as a witness by the Commission. The Commission shall Review the Investigation file:
  - a. If the Commission concludes the Finding is supported by the evidence, it shall inform the Chief; or
  - b. If the Commission determines the Finding is inconclusive, it shall inform the Chief that further Investigation is required; or
  - c. If the Commission concludes the Finding is not supported by the evidence, it shall inform the Chief.
- viii)** The Commission will make no comments or recommendations regarding Officer discipline.
- ix)** If the Department declines to accept the Commission’s recommendation resulting from the Review, a Closed-session meeting of the Commission pursuant to Government Code Section 54957 to hear complaints or charges brought against National City Police Department employees by a citizen (unless the employee requests a public session) shall be scheduled, at which the Department may appear to represent their position. The purpose of the meeting is for the Commission to reach a final decision on its position regarding the Complaint and to afford the Department an opportunity to explain why the Investigation Finding is appropriate.
  - a. If, after the Closed-session meeting of the Commission with the Department the Commission is persuaded to agree with the Department’s Findings, the

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Commission will send notification of same to the Department. The Officer(s) Involved shall be informed pursuant to Department policy and procedures.

b. In those cases where the Commission by a majority vote disagrees with Department's Findings on a Complaint, and cannot resolve its differences with the Department, the Commission will send notification of same to the Department. The Officer(s) Involved shall be informed pursuant to Department policy and Procedures.

i. Additionally, the Commission shall advise the City Manager of the Commission's position. The Commission shall also advise the City Manager of any substantive comments that the Commission has made on individual cases, and may suggest policy changes based on trends that have come to the Commission's attention.

ii. The Commission will make no comments or recommendations regarding Officer discipline.

iii. The City Manager may take whatever action is considered appropriate, consistent with the duties and authority conferred upon that office by law.

iv. If any changes in the Department's Findings occur, the Department will notify the Commission.

c. These operating procedures acknowledge the Officer's right to appeal the position of the Commission consistent with *Caloca v. County of San Diego* (1999), 72 Cal.App.4th 1209 and *Caloca v. County of San Diego* (2002), 102 Cal.App.4th 433, which held that under the Public Safety Officers Procedural Bill of Rights Act (Government Code Section 3300 et seq.), police officers must be afforded an administrative appeal of sustained findings of misconduct even though no disciplinary matters are considered. Such administrative appeal proceeding will be conducted by a neutral, unbiased adjudicator(s) who will examine the finding de novo.

All further terms of the re-examine will be consistent with the guidelines set forth in the *Caloca v. County of San Diego* (2002), 102 Cal.App.4th 433.

**x)** The Commission will not provide any confidential information made known to it or its members by its Investigation to anyone other than the City Manager, City Attorney or the Department. Under no circumstances will the City Manager or City Attorney provide any confidential information made known to the City Manager by Commission to anyone other than the Department.

**xi)** The decision of the Chief regarding the Department's final disposition of the matter shall be communicated to the Complainant in the format prescribed by Penal Code sections 832.5 and 832.7.

a. The Commission shall notify the Complainant of its' position in regard to the Investigation. Should public comment by the Commission be appropriate, the Commission shall comply with the requirements imposed by law regarding non-

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disclosure of personnel information regarding Officer(s) Involved and the Police Officers.

Bill of Rights.

b. The Chief shall notify the Complainants of the protocols for Request for further review by the Commission.

c. The Officer(s) Involved shall be informed pursuant to Department policy and procedures.

**xii)** If the Department finds that any portion of the Complaint is “sustained,” then procedures outlined in the National City Police Department Operating Procedures will be followed.

**Section 10.03 Mediation Procedures (Alternative Complaint Resolution Process)**

A Complainant may request mediation of the Complaint. The Department will undertake mediation upon the mutual consent of the Officer Involved. The Department shall utilize the services of a recognized mediation service or professional to serve as mediator. The parties to the mediation shall consist only of the mediator, the Complainant and the Officer(s) Involved. The mediation shall be informal, and oriented towards resolving the problem or mitigating any misunderstandings. The parties will agree in writing as a condition of mediation that neither the fact of mediation, nor any statements or admissions made during the mediation sessions shall be admissible in any later administrative or judicial proceedings involving the Complaint, including any later initiated Investigation or Department proceedings. Upon satisfactory conclusion of the mediation, the Complaint shall be dismissed and withdrawn, and shall not be filed in any personnel record pertaining to the Officer Involved. The Department shall inform the Commission of the outcome of the mediation (alternative complaint resolution process). The Department or the Commission regarding the Complaint shall thereafter entertain no further proceedings regarding the Complaint.

**Section 10.04 Protocols for Reviewing Service Complaints**

A Service Complaint is a Complaint received from a Citizen regarding quality of service or minor acts or omissions that would not normally rise to the level of Misconduct.

**(a)** The Department shall resolve all Service Complaints and report them to the Commission on a Service Complaint Log form. The documentation will include the action taken to resolve the Complaint.

**(b)** No appeal of a Service Complaint shall be permitted before the Commission. The Commission, however, may audit Complaints categorized as Service Complaints on a quarterly, semi-annual or annual basis, and provide appropriate comment to the City Manager and Chief on the handling of Service Complaints on a continuing basis.

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(c) No public comment by the Commission regarding Service Complaints shall be permitted without the approval of a majority of the Commissioners. Public comment shall not include any discussion of personnel or confidential information.

(d) The Department shall respond by letter to Complainants the Findings of their Investigation of the Service Complaint.

**Article XI. Protocols for Filing of REQUEST FOR FURTHER REVIEW**

Any Complainant who is dissatisfied with the Department's Findings reported following an Investigation of alleged Officer may file a Request for further review by the Commission which shall be based on either evidence or allegations the Complainant believes was omitted in the Investigation. The Department shall inform the Complainant at the time of notification of the opportunity to file a Request for further review.

(a) The Request for further review must be filed within thirty (30) days of the Complainant receiving Department notification regarding disposition of the case. The Commission may adopt rules for permitting late Filings

i) A Request for further review may be filed only by the Complaint in writing, either personally, by mail, fax or email with the Commission Office, or through other arrangements approved by the Commission. No Complaint or Request for further review will be deemed filed with the Commission until it has been reduced to writing and signed by the Complainant.

ii) The Request for further review shall include:

- a. The name, address, and telephone number of the Complainant;
- b. The approximate date the Complaint was filed (if known);
- c. The substance of the initial Complaint;
- d. The evidence, or allegation the Complainant believes was omitted in the Investigation.

iii) The Complainant may withdraw the Request for further review at any time.

(b) The Commission may decline the Request for further review if it appears that the Department's Investigation and Findings were satisfactory and/or no information is provided to justify additional or further REVIEW by the Commission.

(c) Should the Commission accept the Request for further review, the matter shall be forwarded for resolution in accordance with Police Department Operating Procedure 015 et seq. The Commission shall conduct its Review as defined in Section 10.02 Protocols for Reviewing Complaints of these Procedures.

i) The Officer(s) Involved shall be informed pursuant to Department policy and procedures.

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(d) The Commission's determination resulting from the Request for further review shall be final. The Commission shall thereafter entertain no further proceedings regarding the Complaint.

**Article XII. Communications**

In the case of Commission communications:

(a) The Commission shall not identify individuals involved in cases that come before the Commission to any person other than among themselves, the Commission, and the Department;

(b) No Commission member shall release any hearing documents to any person outside of the committee;

(c) No Commission member may publicly represent the Commission without prior authorization from the Commission or the Chairperson;

(d) Any Commissioner regarding any particular Incident or Officer under Commission review shall not send email, nor shall e-mail identify any Department personnel by name. Any e-mail communication sent by a Commission member to any other member or members of the Commission that relates to Commission business shall be furnished to and retained by Commission staff pursuant to the City records retention schedule. Copies of communications shall be sent to the Commission staff at the time the communication is made. The sender or recipient shall not retain individual copies, other than by Commission staff in accordance with the City records retention schedule.

(e) The Commission should address the questions arising out of public comment during Commission public meetings.

i) The questions should be addressed to the Commission and not to Commission staff.

ii) The Chair is the spokesperson for the Commission and may restrict discussion of any question to allow for necessary research.

iii) The Commission acknowledges that not all questions rise to the level of concern requiring a response.

iv) The Chair will advise the questioner when the Commission will respond to a question.

**Article XIII. Monitoring and Reporting**

**Section 13.01** The Commission shall develop a data system to track all Complaints received, develop quarterly reports to inform the City Manager regarding Commission workload and performance, and review the status of Complaints and appeals with the Chief.

**Section 13.02** The Commission may utilize the Consultant to develop recommendations for modification of Department policies and procedures in order to prevent problems, and improve the quality of Investigations and police community relations.

**Section 13.03** The Commission shall develop annual summary reports for the City Manager, Council and public on Commission activities, policy recommendations, and Department follow-through on recommendations. The report may include analysis of closed files that were not appealed, but not for the purpose that the files are to be reopened or that any confidential information or personnel records disclosed.

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**Article XIV. Increasing Public Access**

**Section 14.01** The City Manager shall work with the Commission to make Complaint forms available in formats and locations to reach as many community members as possible.

**Section 14.02** The Consultant shall work with the Commission to develop programs to educate the public about the Commission and the importance of reporting problems.

**Section 14.03** The Commission shall develop programs to educate Department personnel on Commission activities. Department personnel shall be informed that the Commission is another means for Citizens to file Complaints. The Commission shall work with the Department to develop guidelines for situations when a Complainant with a Complaint directly contacts a commander or supervisor within the Department.

**Article XV. Limitation on Power**

Neither the Commission nor any retained Consultant may comment upon or recommend the level of discipline for any Officer pursuant to any Review made under this procedure.

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Operating Procedures of the National City Community and Police Relations Commission

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